

ESTTA Tracking number: **ESTTA358025**

Filing date: **07/15/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189474
Party	Defendant Bernadette Cooper and Joyce Irby
Correspondence Address	JAMIE SHELDEN LAW OFFICE OF JAMIE SHELDEN 1760 Suite F, PMB 220Airline Highway HOLLISTER, CA 95023-4094 UNITED STATES jamie@justtrademarks.com
Submission	Motion to Dismiss 2.132
Filer's Name	Jamie Shelden, Esq.
Filer's e-mail	jamie@justtrademarks.com
Signature	/Jamie Shelden/
Date	07/15/2010
Attachments	Motion to Dismiss KLYMAXX.pdf (2 pages)(71101 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cheryl Cooley,)	
)	Opposition no.: 91189474
Opposer,)	
)	Mark: KLYMAXX
v.)	
)	Serial no.: 77/571,759
)	
Bernadette Cooper and)	
Joyce Irby,)	
)	
Applicants.)	

**Motion for Involuntary Dismissal for Opposer’s
Failure to Take Testimony**

Applicants, Bernadette Cooper and Joyce Irby, by and through their undersigned attorney and hereby submits this Motion for Involuntary Dismissal for Opposer’s Failure to Take Testimony pursuant to 37 CFR § 2.132 and TMBP §534.01:

As the basis for this motion, Applicant reports that Opposer’s testimony period expired on May 5, 2010 per order dated December 2, 2009. Opposer did not take any testimony, Opposer did not file a notice of reliance, and Opposer did not file any other evidence with the Board. Likewise, Applicant has not been served with any transcripts of any testimony that may have been taken, and/or any notice of deposition of any party to this matter.

37 CFR §2.132(a) provides, “If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to

offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute.”

Therefore, Applicant respectfully requests that the Board enter an order to show cause why judgment should not issue in Applicant’s favor for failure to prosecute by Opposer.

Respectfully submitted,

Date: July 15, 2010

By: Jamie Shelden

Jamie R. Shelden, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

MOTION FOR INVOLUNTARY DISMISSAL FOR OPPOSER’S FAILURE TO TAKE TESTIMONY

is being served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, addressed as follows:

Jack F. Sherer
99 Park Avenue, 3rd Floor
New York, NY 10016

Jamie Shelden
Jamie R. Shelden